REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1755 (CTA Case No. 8897)
	Present:
-versus-	DEL ROSARIO, *P.J.*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
PREMIUM TOBACCO REDRYING & FLUECURING CORPORATION, Respondent.	Promulgated: APR 22 2019 3:37 p.m.

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DECISION

Fabon-Victorino, J.:

In this petition for review dated January 3, 2018,[1] petitioner Commissioner of Internal Revenue assails the Decision dated July 18, 2017[2] and Resolution dated November 24, 2017,[3] both rendered by the Court in Division in CTA Case No. 8897, which nullified petitioner's deficiency income tax (IT), value-added tax (VAT), documentary stamp tax (DST) assessments, together with increments issued against respondent covering taxable year (TY) 2009.

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[1] *Rollo,* pp. 6-16.
[2] Ibid. at pp. 20-62.
[3] Id. at pp. pp. 63-66.

The following facts of the case remain uncontroverted.

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Premium Tobacco Redrying and Fluecuring Corporation is a BIR-registered domestic corporation primarily engaged in re-drying of tobacco leaves and warehousing services, among others. Its business address is at No. 24 Fortune Avenue, Barangay Fortune, Marikina City.

On October 29, 2009, respondent entered into a Plan of De Facto Merger with Fortune Tobacco Corporation[4] (FTC) to allow reorganization of their respective holding structures/businesses. To effect such corporate reorganization, a Deed of Assignment of even date was executed between respondent and FTC whereby the former transferred to the latter more than eighty percent (80%) of its total assets and some of its liabilities in exchange for One Million Two Hundred Fifteen Thousand Five Hundred Twenty-Six (1,215,526) FTC shares of stock and additional paid-in-capital (APIC) duly recorded in FTC's books of account.

On February 23, 2010, respondent filed with the BIR National Office – Law Division a Letter-Request seeking for a confirmatory ruling that its transfer of more than 80% of its total assets and a portion for its liabilities in exchange for FTC's shares of capital stock and APIC is a *de facto* merger under Section 40(C)(2) in relation to Section 40(C)(6)(b) of the NIRC, as amended.

On May 25, 2010, respondent received a Letter of Authority dated May 14, 2010, authorizing the examination

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[4] FTC is respondent's primary client engaged in the manufacture and sale of tobacco and tobacco-related products, see assailed Decision p. 3.

of its books of account and other accounting record for all internal revenue taxes covering TY 2009.

On January 25, 2012, respondent thru its President Virgilio G. Giron, executed a Waiver of the Statute of Limitation Under the NIRC of 1997, as amended to extend the period to assess until December 31, 2012. The waiver was accepted by petitioner through Assistant Commissioner (AC) Alfredo V. Misajon on February 9, 2012.

On October 2, 2012, respondent executed a *second* waiver which petitioner accepted through AC Misajon on October 15, 2012. The second waiver stretched the prescriptive period for petitioner to assess until September 30, 2013.

Long before the period for the second waiver lapsed, respondent, through its president, executed the third Waiver on May 28, 2013, extending the period to assess until June 30, 2014. The third Waiver was accepted by petitioner thru AC Misajon on July 13, 2013.

On September 12, 2013, respondent received a Preliminary Assessment Notice (PAN) with Details of Discrepancy, assessing it for deficiency IT, VAT, DST, and expanded withholding tax (EWT) for TY 2009.

On October 24, 2013, respondent filed its position paper, refuting petitioner's initial findings of tax deficiencies as stated in the PAN.

On January 27, 2014, respondent received petitioner's Formal Letter of Demand (FLD) accompanied by Formal Assessment Notices (FAN) and Details of Discrepancy dated January 24, 2014, assessing it for the following deficiency taxes with increments covering TY 2009, broken down as follows:

Tax Type	Basic	Surcharge	Interest	Total
IT	₱ 66,622,356.27		₱48,369,655.92	₱114,992,012.19
VAT	31,574,583.20		24,308,103.78	55,882,686.98

DST	3,946,050.00	₱986,512.50	3,213,057.70	8,145,620.20
Total	₱102,142,989.47	₱986,512.50	₱75,890,817.40	₱179,020,319.37

On February 25, 2014, respondent protested the FLD/FAN, on the ground of prescription.

On September 22, 2014, respondent filed a Petition for Review before the Court in Division, claiming inaction on the part of petitioner on its protest.

On July 18, 2017, the Court in Division rendered the assailed Decision, disposing the case in the following fashion:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments issued by (petitioner) against (respondent) for taxable year 2009 covering deficiency income tax, value-added tax and documentary stamp tax are hereby **CANCELLED AND WITHDRAWN**.
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> **SO ORDERED**.

The Court in Division cancelled the deficiency IT, against respondent as: 1) its substantial transfer of assets, and a part of its liabilities to FTC in exchange for the latter's shares of stock and APIC is an exchange transaction contemplated by Sections 40(C)(2) in relation to Section 40(C)(6)(b) of the NIRC, as amended, hence, no income should be *recognized* on account of such transaction; 2) the alleged income from the exchange transaction was merely theoretical for it was not yet *realized* by respondent; and 3) petitioner's outright disallowance of excess income tax credits carry-over is void for failure to state the factual and legal bases of such assessment.

The Court in Division as well invalidated the deficiency VAT assessment ratiocinating that respondent's transfer of assets to FTC in exchange for the latter's shares is a subscription contract rather than a contract of sale, for which reason no VATable sales arose on account of such transfer. Further, Revenue Memorandum Ruling (RMR) No.

1-02 explicitly recognizes such transaction as exempted from VAT.

And since the subject transfer is an exchange transaction covered by Sections 40(C)(2) in relation to Section 40(C)(6)(b) of the NIRC, as amended, no DST shall be due thereon by express provision of Section 199(m) of the same Code, the Court in Division concluded.

On August 2, 2017, petitioner moved to reconsider the assailed Decision of July 18, 2017, but was denied by the Court in Division in the equally assailed Resolution of November 24, 2017. Hence, the present recourse.

Petitioner maintains that the provisions of Revenue Regulations (RR) No. 18-2001 are mandatory preconditions for a taxpayer to avail of the benefits of Section 40(C)(2) of the NIRC, as amended. Specifically, a request for ruling on such matter, plus a BIR Certification/Ruling affirming the transaction as a tax-free exchange must be appended to requesting party's audited financial statement (AFS) and income tax returns (ITRs) during the year of exchange which respondent failed to comply. That being the case, the subject transfer between respondent and FTC would not qualify for a tax-free exchange.

Petitioner further states that respondent's transfer of assets along with a fragment of liabilities in favor of FTC in exchange for the latter's shares of stock and APIC did not have any legitimate business purpose, hence, would not constitute as a tax-free exchange transaction under Section 40(C)(6)(b) of the NIRC, as amended, as expounded by RMR No. 1-02. Petitioner defined *bona fide* business purpose as the transfer of properties for shares of stock which is permanent and not for temporary holding. Since the properties received by FTC from respondent were again allegedly conveyed to a newly-formed corporation PMFTC, Inc. four (4) months following the subject exchange, such corporate move did not attain the required element of permanence, hence, the previous transfer of assets made by respondent to FTC was only for the purpose of skirting payment of income taxes. Consequently, the deficiency IT resulting therefrom must be upheld.

Also, to permit respondent from subtracting tax credits to its tax liability in TY 2009 and at the same time carry-over the same sum in the succeeding years would grant it the license to unlawfully claim for tax credits twice. Respondent likewise benefited not only on the succeeding TYs but also in TY 2009 since it would be entitled to claim such credits to diminish the tax due on the latter period. From the foregoing, the disallowance of respondent's excess tax credits carry-over reflected in its 2009 Annual ITR must be sustained, says petitioner.

Petitioner finally asserts that since the subject transfer between respondent and FTC is not eligible as a tax-free exchange transaction under Sections 40(C)(2) in relation to 40(C)(6)(b) of the NIRC, as amended, it is as well liable for deficiency VAT and DST due on the foregoing transaction. In other words, respondent must be held wholly accountable for deficiency IT, VAT and DST together with increments on account of the subject transfer.

In its Comment dated March 9, 2018,[5] respondent counters that it need not secure a BIR ruling confirming the subject transfer as tax-free since it was not required under Section 40(C)(2) and (6)(b) of the NIRC, as amended.[6] To allow petitioner to impose such requirement is *ultra vires* as he arrogated upon himself a power belonging to the legislature.

Respondent further states that the bulk of assets it conveyed to FTC in exchange for the latter's shares of stock did not inure in its favor after the plan of *de facto* merger occurred, on this ground, the transfer was permanent and not temporary. Additionally, its corporate reorganization was designed merely to decrease the operating and administrative expenses within their business group. *Ergo,* the subject transfer satisfied the requirement of *bona fide* business purpose under Section 40(C)(2) and (6)(b) of the NIRC, as amended, as implemented by Revenue Regulations (RR) No. 18-2001.

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[5] *Rollo,* pp. 73-78.
[6] Respondent invokes the case of *Commissioner of Internal Revenue vs. Dakudao and Sons, Inc.,* CTA EB No. 1150, May 12, 2015 in support of its position.

Besides, there is nothing legally offensive in FTC's subsequent transfer of assets to PMFTC, Inc. as it was merely exercising its right of ownership sanctioned both under mercantile[7] and civil[8] laws. Thus, the transfer of properties from FTC to PMFTC, Inc. cannot be construed to mean that the *first* transfer, i.e., from respondent to FTC, was momentary, posits respondent.

Respondent as well echoes the finding of the Court in Division that petitioner erroneously disallowed respondent's excess tax credits carry-over of ₱8,619,317.54 since the tax benefit it derived therefrom redounds to TY 2010, hence, could only be assessed in such period.

Finally, petitioner is erroneous in his supposition that since the subject transfer was not exempted from IT, it is likewise liable for VAT and DST.

THE RULING OF THE COURT

The instant petition must fail.

Section 40(C)(1)[9] of the NIRC, as amended provides the general rule that gains derived from exchange of property shall be wholly recognized and consequently are subject to IT. Exceptions are however found in Section 40(C)(2) of the same Code. Paragraph (a) thereof specifically decrees that gains shall not be recognized when a corporation exchanges its property for shares of stock of another corporation pursuant to a plan of merger or consolidation, thus:

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[7] Sections 2 and 36 of Batas Pambansa Blg. 68, or the Corporation Code of the Philippines.

[8] Articles 427 and 428 of the Civil Code.

[9] SEC. 40. Determination of Amount and Recognition of Gain or Loss. - xxx

(C) Exchange of Property. –

(1) General Rule. - Except as herein provided, upon the sale or exchange or property, the entire amount of the gain or loss, as the case may be, shall be recognized.

> SEC. 40. **Determination of Amount and Recognition of Gain or Loss. –**
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> xxx xxx xxx
>
> (C) Exchange of Property. –
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> (2) Exception. - No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation -
>
> (a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; xxx

Concomitantly, Section 40(C)(6)(b) of the NIRC, as amended states that the term "merger or consolidation" embraces a *de facto* merger, or one by which a corporation acquires all or substantially all of the properties of another corporation for stock. In addition, the said provision mandates that such exchange be done under a *bona fide* business purpose and not merely for eluding the burden of taxation, *viz.:*

> SEC. 40. **Determination of Amount and Recognition of Gain or Loss. –**
>
> (6) Definitions. – xxx
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> (b) The term "merger" or "consolidation", when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, That for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: Provided, further, That in determining whether a bona fide business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transaction shall be treated as a single unit: Provided, finally, That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term "property" shall be taken to include the cash assets of the transferor.

The *raison d' etre* for encouraging legitimate corporate combinations or reorganizations was elucidated in the case of *Commissioner of Internal Revenue vs. Rufino,*[10] where the Supreme Court declared, thus:

> The reason for this conclusion is traceable to the purpose of the legislature in adopting the provision of law in question. The basic Idea was to correct the Tax Code which, by imposing taxes on corporate combinations and expansions, discouraged the same to the detriment of economic progress, particularly the promotion of local industry. xxx

As it stands, non-recognition of gains on an exchange transaction rests upon the confluence of two (2) conditions, namely: *first,* there must be a legal merger/consolidation, or transfer of all or substantially all of the properties of a corporation for stock of another corporation; and *second,* such business restructuring/reorganization must be for a *bona fide* business purpose.

The Court is not persuaded by petitioner's assertion that per RR No. 18-2001, a prior BIR confirmation is required before respondent's transaction with FTC may be conferred tax-exempt status.

It is basic that an administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.[11] The rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute.[12] To do so constitutes lawmaking, which is generally reserved for Congress.[13]

En contra with petitioner's pretense, nowhere in Section 40(C)(2)(a) in relation to 40(C)(6)(b) of the NIRC, as amended, that requires a prior BIR ruling validating an exchange transaction as tax-free before respondent may reap the benefits of the foregoing provisions. To repeat, the

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[10] G.R. Nos. L-33665-68, February 27, 1987.

[11] See *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005.

[12] See *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation,* G.R. Nos. 167274-75, July 21, 2008.

[13] See *Soriano vs. Secretary of Finance,* G.R. No. 184450, January 24, 2017.

statute only requires a corporation to exchange all or substantially all of its property for shares of stock of another corporation under a legitimate business objective. The Court cannot read into the law what obviously was not intended by Congress. To do so would be judicial legislation, nothing less.[14]

Neither will petitioner's invocation of RR No. 18-2001[15] save the day for him. Such tax issuance does not mandate a tax certification or ruling confirming the exchange as being absolved from tax as a prerequisite for the enjoyment of the benefit conferred under Section 40(C)(2) of the NIRC, as amended. It merely serves as a guide for the BIR to track the basis of a property and/or shares of stock received through an exchange transaction contemplated by the foregoing provision in the event of subsequent disposition thereof. This finds support in *Commissioner of Internal Revenue vs. Co, et al.,*[16] wherein it was ruled that:

> xxx contrary to the position taken by the CIR, RR No. 18-2001 merely provides for guidelines in monitoring tax-free exchange of property. The BIR ruling required thereon serves to monitor the tax-free properties in order that in cases of subsequent sales of said properties, they shall be taxed accordingly. Stated differently, the BIR ruling/certification required under RR No. 18-2001 is for determining gain or loss on a subsequent sale or disposition of property subject of the tax-free exchange, and not as a precondition for availment of a tax exemption.

Petitioner contends that the *first* transfer between respondent and FTC was without a *bona fide* business purpose since the requisite permanence mandated by RMR No. 1-2002 is wanting on the *subsequent* transfer by FTC to PFMTC, Inc. of a fragment of properties FTC previously received from respondent.

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[14] See *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 134062, April 17, 2007.

[15] The subject of RR No. 18-2001 states: Guidelines on the Monitoring of the Basis of Property Transferred and Shares received, Pursuant to a Tax-Free Exchange of Property for Shares under Section 40 (C)(2) of the National Internal Revenue Code of 1997, Penalties for Failure to Comply with such Guidelines, and Authorizing the Imposition of Fees for the Monitoring thereof.

[16] CTA EB No. 1522, February 28, 2018.

This is misleading.

For easy reference, the relevant portion of RMR No. 1-2002 is hereby reproduced in *verbatim*, *viz.*:

> "The phrase 'substantially all the properties of another corporation' is defined in BIR General Circular No. V-253 dated July 16, 1957 to mean 'the acquisition by one corporation of at least 80% of the assets, including cash, of another corporation,' which 'has the element of permanence and not merely momentary holding'."

A plain reading of the provision shows that the element of "permanence" referred to in RMR No. 1-2002 does not relate to the subsequent partial transfer of assets by FTC in favor of PFMTC, Inc., as petitioner suggests. Rather, as correctly observed by the Court in Division, such requirement speaks of respondent's substantial conveyance of its net assets in exchange for FTC's shares of stock since it is the former pleading non-recognition of gains in the subject transaction.

Here, the Plan of *De Facto* Merger,[17] as well as Deed of Assignment[18] executed by respondent and FTC demonstrate their resolve to permanently exchange their respective properties with one another. For respondent's part, it conveyed substantially all of its assets consisting of cash, accounts receivable, advances to suppliers, net improvements on land and building, machinery and equipment, transportation equipment, office machines, along with laboratory and medical equipment, net of accounts payable, aggregately valued at ₱62,346,084.88[19] in favor of FTC. The latter in turn transferred its 1,215,526 shares of stock at ₱1/per share or ₱1,215,526.00, along with its recorded APIC of ₱61,130,558.88, or for a sum of ₱62,346,084.88 in consideration of respondent's net assets.

More importantly, the *bona fide* objective[20] of such corporate reorganization was to diminish operating and

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[17] Exhibit P-10, docket (CTA Case No. 8897), pp. 677-681.
[18] Exhibit P-11, ibid. at pp. 682-685.
[19] Total assets less accounts payable equals net assets (₱62,424,182.64 - ₱78,098.76= ₱62,346,084.88).
[20] Exhibit P-10, docket (CTA Case No. 8897), p. 678.

administrative expenses by eliminating unnecessary facilities, simplified management, as well as to optimize utilization of resources within the business group. Since the subject exchange between respondent and FTC sternly adhered with all the conditions spelled out in Section 40(C)(2)(a) in relation to 40(C)(6)(b) of the NIRC, as amended, it stands to reason that no income shall be recognized on the said transaction, hence, should not be burdened by imposition of income tax by petitioner.

Neither does the Court subscribe with petitioner's stance that he properly disallowed respondent's excess tax credits it opted to carry-over for the succeeding TYs.

Section 228 of the NIRC,[21] as amended, as implemented by RR No. 12-99 decree *inter alia,* that a taxpayer shall be informed in writing of facts, law, rules and regulations upon which it is based, otherwise the assessment is a patent nullity. The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory.[22] The rationale behind the requirement that taxpayers should be informed of the facts and law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law.[23]

Perusal of the FLD,[24] as well as the accompanying Details of Discrepancy[25] reveals that petitioner offered no justification on why he disallowed respondent's excess tax credits carry-over in the amount of ₱8,619,317.54, for which reason, it is void for transgressing the latter's right to due process on assessment embodied in Section 228 of the NIRC, as amended. And even granting that petitioner

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[21] **SEC. 228. Protesting of Assessment. –** xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

[22] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009.

[23] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,* G.R. No. 215957, November 9, 2016.

[24] Exhibit P-1, docket (CTA Case No. 8897), pp. 519-520.

[25] Exhibit P-2, ibid. at pp. 521-522.

adequately explained the factual and legal basis thereof, he precipitately disallowed the same via the subject assessment for TY 2009 since any benefit, *e.g.*, reduction in tax due that it may derive therefrom would materialize in the succeeding TYs and not on TY 2009.

Equally unavailing is petitioner's insinuation that respondent may be held accountable for VAT on its substantial transfer of assets to FTC in exchange for the latter's shares of stock.

A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.[26] As a corollary, where a shareholder conveys properties in consideration of a corporation's shares of stock, such transaction cannot be deemed a contract of sale since ownership of shareholder's assets remained the same, albeit in a different form, such as from properties to shares of stock.[27]

In this case, by respondent's transfer of bulk of its net assets in favor of FTC in exchange for the latter's shares of stock and APIC, no sale occurred since its net assets were merely transmuted into shareholdings at FTC. There being no sales incurred by respondent, petitioner may not impose VAT on such transfer of assets.

Even assuming *ex gratia argumenti* that such transfer was a sale, Section 4.106-8[28] of RR No. 16-2005 relieves the goods or properties transferred by corporate parties through

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[26] See *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-046, June 16, 2009.

[27] See *Delpher Trades Corporation vs. Intermediate Appellate Court,* G.R. No. L-69259, January 26, 1988.

[28] SECTION 4.106-8. *Change or Cessation of Status as VAT-registered Person.* –

(b) Not subject to output tax

The VAT shall not apply to goods or properties existing as of the occurrence of the following:

(3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of merger or consolidation, shall be absorbed by the surviving or new corporation.

a merger or consolidation from being subjected to VAT. Note that for tax purposes, the term merger or consolidation encompasses a corporation acquiring all or substantially all of the properties of another corporation in exchange for stock by clear recognition of Section 40(C)(6)(b) of the NIRC, as amended.

Again, respondent's substantial conveyance of its net assets to FTC in exchange of the latter's shares of stock and APIC is a *de facto* merger envisaged by Section 40(C)(2)(a) in relation to 40(C)(6)(b) of the NIRC, as amended. Consistent with Section 4.106-8 of RR No. 16-2005, respondent's assets involved in such transfer are excused from VAT imposition.

Respondent is as well exonerated from DST liability simply because the exchange transaction it entered into with FTC is one under Section 40(C)(2)(a) of the NIRC, as amended. Section 199(m) of the same Code explicitly declares that instruments, documents or papers evidencing a corporate combination or reorganization pursuant to Section 40(C)(2) of the NIRC, as amended are excused from being subjected to DST:

> SEC. 199. Documents and Papers Not Subject to Stamp Tax. - The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
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> (m) Transfer of property pursuant to Section 40 (C) (2) of the National Internal Revenue Code of 1997, as amended.

On a final note, the government's claim for taxes on exchanges sanctioned by Section 40(C)(2) of the Tax Code, as obtaining in the present case is not entirely lost or squandered, but was momentarily deferred. In the event that the parties on the foregoing exchange *<u>subsequently</u>* sell or dispose the shares of stock and/or property they received on account thereof, petitioner's correlative right to assess taxes thereon will then accrue. Precisely, to reflect the accurate valuation of such shares and/or property, Section 40(C)(5)(a)[29] and (b)[30] of the NIRC, as amended mandates

[29] **SEC. 40. Determination of Amount and Recognition of Gain or Loss. -**

petitioner to utilize the *substituted* basis in determining potential taxes that may be due thereon. The only legal proscription at present is that such event has not yet come to pass.

WHEREFORE, the Petition for Review dated January 3, 2018 filed by the Commissioner of Internal Revenue is **DENIED**. The assailed Decision and Resolution dated July 18, 2017 and November 24, 2017, respectively, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

(C) Exchange of Property. -

(5) Basis -

(a) The basis of the stock or securities received by the transferor upon the exchange specified in the above exception shall be the same as the basis of the property, stock or securities exchanged, decreased by (1) the money received, and (2) the fair market value of the other property received, and increased by (a) the amount treated as dividend of the shareholder and (b) the amount of any gain that was recognized on the exchange: Provided, That the property received as 'boot' shall have as basis its fair market value: Provided, further, That if as part of the consideration to the transferor, the transferee of property assumes a liability of the transferor or acquires form the latter property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this paragraph, be treated as money received by the transferor on the exchange: Provided, finally, That if the transferor receives several kinds of stock or securities, the Commissioner is hereby authorized to allocate the basis among the several classes of stocks or securities.

[30] (b) The basis of the property transferred in the hands of the transferee shall be the same as it would be in the hands of the transferor increased by the amount of the gain recognized to the transferor on the transfer.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice